IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Crl.MC.No. 2890 of 2007()

CC.942/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA
CRIME NO.1102/2000 OF ALUVA POLICE STATION

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PETITIONER: ACCUSED,1,2, & 3

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1. KARTHIKEYAN,AGED 51, S/O. UNNI,
THAMARASSERRY MOLOTH,KARIMAKATTU KARA,
VAZHAKKALA VILLAGE, ERNAKULAM.

2. RAHEEM,AGED 41, S/O. ABOOBACKER,
KARUMAKKATTU,VARUTHIKKAL VEEDU,KAKKANADU,
VAZHAKKALA VILLAGE, ERNAKULAM.

3. JAYAN JACOB,AGED 51,S/O. JACOB,
POTHUKATTU VEETTIL,CHEMBUMUKKU BHAGAM,
VAZHAKKALA ERNAKULAM.

BY ADV. SRI.P.V.ANILKUMAR
SRI.JOSHY THOMAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2890 of 2007

Dated this the 20th day of September 2007

O R D E R

The petitioners face indictment as accused 1 to 3 in a prosecution under Section 420 read with 34 I.P.C. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Altogether there were six accused persons. The petitioners were not available for trial. The case against the co-accused continued. They were found not guilty and acquitted. The case against the petitioners has been split up. Consequent to their non-appearance, warrants of arrest have been issued against the petitioners. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Their absence earlier was not wilful or deliberate. The petitioners are willing to surrender before the learned Magistrate and seek regular bail. But they apprehend that their application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. They, therefore, pray that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioners on bail when they appear and apply for bail.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which they could not earlier appear before the learned

Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioners on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003 (1)KLT 339].

4. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioners surrender before the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioners further submits that the petitioners are entitled for a discharge. Needless to say, the petitioners, after appearance before the learned Magistrate, at the stage of Section 239/240 Cr.P.C can raise their plea for discharge. The learned Magistrate is bound to and obliged under the Code of Criminal Procedure to consider such plea of discharge. All arguments in support of such discharge can be urged by the petitioners before the learned Magistrate.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007